

MDR Tracking Number: M5-04-0558-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 10-23-03.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$650.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was the only issue** to be resolved. The functional capacity exam, work hardening/conditioning, work hardening/conditional each additional hour were found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

This Findings and Decision is hereby issued this 9th day of January 2004.

Debra L. Hewitt
Medical Dispute Resolution Officer
Medical Review Division

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable to dates of service 01-17-03 through 03-21-03 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 9th day of January 2004.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

RL/dlh

January 8, 2004

**NOTICE OF INDEPENDENT REVIEW DECISION
Corrected Letter**

RE: MDR Tracking #: M5-04-0558-01

___ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). ___ IRO Certificate Number is 5348. Texas Worker's Compensation Commission (TWCC) Rule §133.308 allows for a claimant or provider to request an independent review of a Carrier's adverse medical necessity determination. TWCC assigned the above-reference case to ___ for independent review in accordance with this Rule.

___ has performed an independent review of the proposed care to determine whether or not the adverse determination was appropriate. Relevant medical records, documentation provided by the parties referenced above and other documentation and written information submitted regarding this appeal was reviewed during the performance of this independent review.

This case was reviewed by a practicing physician on the ___ external review panel. The reviewer has met the requirements for the ADL of TWCC or has been approved as an exception to the ADL requirement. This physician is board certified in physical medicine and rehabilitation. The ___ physician reviewer signed a statement certifying that no known conflicts of interest exist between this physician and any of the treating physicians or providers or any of the physicians or providers who reviewed this case for a determination prior to the referral to ___ for independent review. In addition, the ___ physician reviewer certified that the review was performed without bias for or against any party in this case.

Clinical History

This case concerns a 42 year-old male who sustained a work-related injury on ___. The patient reported that while at work he was restrained by three security officers, when he injured his right upper extremity, chest and back. An MRI of the lumbar spine dated 7/31/02 indicated a 1mm posterior bulge at L3-L4, a 1-2mm symmetrical bulge at L4-L5, 1mm bulge at L5-S1, and mild degenerative change along the facets of L4-L5 and L5-S1. The diagnoses for this patient have included right shoulder strain, disc bulge L3 through S1, contusion right ribs and left arm, abrasion left chest, and pain right wrist/ganglion cyst. The patient was evaluated by an orthopedist who aspirated his ganglion cyst. The orthopedist did not indicate that further surgical intervention was required for his lower back. The patient has also undergone a psychiatric evaluation where it was determined that the patient's diagnoses included anger and anxiety. Treatment for this patient has included physical therapy and counseling.

Requested Services

Functional Capacity Exam, work hardening/conditioning, work hardening/conditioning each additional hour from 1/17/03 through 3/21/03.

Decision

The Carrier's determination that these services were not medically necessary for the treatment of this patient's condition is overturned.

Rationale/Basis for Decision

The ____ physician reviewer noted that this case concerns a 42 year-old male who sustained a work related injury to his back on _____. The ____ physician reviewer also noted that the patient was treated with traditional physical therapy for a prolonged period but was still unable to return to work due to continued back pain. The ____ physician reviewer indicated that this patient was referred to a functional capacity evaluation followed by a work hardening program that included muscle strengthening, aerobic conditioning and simulated job training activities. The ____ physician reviewer explained that a physical conditioning program that included a cognitive behavioral approach plus intensive physical training and supervised by physical therapy and/or a multidisciplinary team is effective in reducing the number of sick days for workers with chronic back pain. (Schonstein, E et al; Cochrane Review: Issue 2-2003). The ____ physician reviewer noted that from 1/17/03 through 3/25/03 the patient made improvements in all areas and his physical work capacity improved from light physical to medium physical demand. The ____ physician reviewer also explained that although the patient had continued back pain, his work capacity improved and the patient clearly received benefit from a comprehensive work hardening program. Therefore, the ____ physician consultant concluded that the Functional Capacity Exam, work hardening/conditioning, work hardening/conditioning each additional hour from 1/17/03 through 3/21/03 were medically necessary to treat this patient's condition.

Sincerely,